



Appeal Decision

By **A L McCooey BA (Hons) MSc MRTPI**

an Inspector appointed by the Welsh Ministers

Decision date: 23/05/2023

Appeal reference: CAS-02195-F9H2R7

Site address: Fabian Way Motor Company, 117-129 Peniel Green Road, Llansamlet, Swansea SA7 9BA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Jamie Rees against an enforcement notice issued by City and County of Swansea Council.
 - The enforcement notice, numbered ENF2019/0493, was issued on 6 September 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the carrying out of engineering operations to provide an extension of car park/ sales area and the erection of flood lights on the boundary of the site.
 - The requirements of the notice are to:
 - (i) Cease the unauthorised use of land for vehicle parking and sales.
 - (ii) Remove the gabion basket retaining wall and hard surfaced area retained by gabion baskets.
 - (iii) Grade back the land to re-instate the land levels to the levels on site prior to the commencement of works and make safe.
 - (iv) On completion of step (iii) above, provide native planting to soften the whole of the finished landform.
 - (v) Remove all of the lighting columns attached to the perimeter fencing on the southern and eastern boundaries.
 - (vi) Remove all waste materials associated with compliance of (i) – (v).
 - The period for compliance with the requirements is:
 - (i) Cease the use within one day when the Notice takes effect.
 - (ii) 4 months for the removal of the works, land reinstatement and planting.
 - The appeal was made on the grounds set out in section 174(2) (a), (c) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - A site visit was made by the Inspector on 11 April 2023.
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Decision

1. The enforcement notice is varied by the deletion of requirement (iv) in Section 5 of the notice and its substitution with the following text: (iv) On completion of step (iii) above, seed the whole of the finished landform with grass, comprising of the following seed mix and sowing rate: 50% Strong Creeping Red Fescue; 40% Dwarf Perennial Ryegrass; and 10% Chewings Fescue at a sowing rate of 35g/m². Subject to this variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused for the application deemed to have been made under section 177(5) of the Act.

Background and Procedural Matters

2. I wrote to the Local Planning Authority concerning requirement (iv) of the enforcement notice (EN) – which was to provide native planting. This requirement did not clearly tell the recipient what they had to do to comply with the EN. The Local Planning Authority suggested that this requirement be varied as set out in the formal decision above. The appellant made no comments on this variation. I consider this to be sufficiently precise and shall vary the requirements of the EN accordingly.
3. The appeal site is located on the A48 adjacent to Llansamlet service station. It is in use as a car sales premises with offices and a garage to the rear. There are residential properties to the east, two of which adjoin the site. The rear of the site wraps around the adjoining residential property and adjoins the garden of another dwelling. There is a considerable difference in level and the gardens of the dwellings are lower. Gabion basket walls have been erected around the rear projecting part of the site and the land is in use in connection with the car sales business.
4. The appellant argues that the Council has not clearly identified the land that is the subject of the breach. The Council's evidence included a plan that defined the land on which use for car sales/ repairs is accepted as lawful. In addition, planning permission 2022/0896/FUL was granted for the retention and completion of detached workshop and use of land for car sales on 5 September 2022. Both parties refer to this approval in their submissions. Having considered the details of this application, I note that a revised site plan was submitted to exclude the area to the rear of the adjoining residential property. In this context, the wording of the breach makes it clear what works and part of the site are subject to the requirements of the EN. I shall refer to the disputed area without planning permission as the rear of the site in this decision.

Reasons

The appeal on ground (c)

5. The appellant refers to large gabion retaining features approved under planning permission 2006/1158. This planning permission was for a different use as a car rental office and parking. The Local Planning Authority indicate that there were several pre-commencement conditions that were not discharged and that some of them went to the heart of the planning permission. The appellant has supplied no evidence to refute this or to demonstrate that this planning permission was lawfully implemented. The Council has supplied aerial photographs from 2008 and 2010 showing the entire site free of any use or parked cars. In all these circumstances I conclude that this planning permission was not implemented and cannot be relied upon in support of this appeal.
6. The appellant also argues that there were gabion walls present that were replaced in 2019 (which became necessary due to a landslide). The Council has supplied photographic evidence of the site over time, which shows that there were no such walls present. The neighbouring resident indicates that there was no landslide in 2019 and that any gabions were along the side boundary and were low features hidden behind a

wall. This is supported by the plans for planning permission 2006/1158, which indicate existing gabions along the side boundary with no. 137 and not to the rear of 137 and side of no. 139, which is the area in dispute.

7. The appellant argues that the land was always part of the adjoining service station use. The evidence does not support this contention. The land is vacant in aerial photographs from 2005, 2008 and 2010. There was planning permission in late 2010 for car rental/sales for a part of the appeal site, which did not include the land to the rear. It is unclear if this planning permission was lawfully implemented. There are cars present in one aerial photograph from 2013, but only within the 2010 application site. The area to the rear appears green with trees along the appeal site boundary with no. 139.
8. The considerable engineering works that have taken place to the rear boundary of no. 137 and side boundary of no. 139 required planning permission. There is no convincing evidence to persuade me that any approval given under planning permission 2006/1158 has been lawfully implemented. In the absence of the required planning permission for the use of the rear of the site or the engineering works, the appeal on ground (c) must fail.

The appeal on ground (a)

9. The engineering operations have retained the extension to the car sales area with large gabion baskets filled with stone. A high close-boarded fence has been erected on top of these walls. These works present a poor appearance that has had a detrimental impact on the character and appearance of the area. As well as presenting an unsightly appearance, the high gabion walls and fence are dominant and overbearing to the gardens and rear elevations of both neighbouring residential properties. The adverse impacts have been set out in submissions by residents of a neighbouring property. I also note that all of their garden appears is in use, contrary to the claims of the appellant.
10. The fact that a retaining wall was approved in 2006 does not alter my conclusions. This was approved in a different policy context. I note that the approved plan only provided one section closer to the rear boundary of the site. Conditions required the submission of a scheme showing any changes to existing ground levels within the site and landscaping of the site to screen the gabions. These schemes were to be approved by the Local Planning Authority. I note that none were submitted. One cannot therefore assess whether the 2006 planning permission is comparable to the works that are the subject of the EN.
11. Whilst I note that the car sales and workshop have received planning permission, the extended area does bring the car sales use closer to the adjoining dwellings than the approved site. This has led to additional noise and disturbance to residents. The security lighting on the fence results in light overspill to the adjoining properties to the detriment of the living conditions of residents. It is unclear to what extent fitting sensors would address the problem, as the movements of customers and staff would cause the lights to operate continually.
12. For these reasons, I find that the works are contrary to Policies PS 2 and RP 2 of the Local Development Plan and that planning permission should not be granted for the development that is the subject of the EN. The appeal on ground (a) fails and I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeal on ground (g)

13. I am not persuaded that there is any evidence of a shortage of contractors to undertake the requirements of the EN within the period for compliance – in this case 4 months. The Council and neighbouring resident point out that the works were completed within 2 months. The adverse effects of the unauthorised development should be addressed in a timely manner, and I consider that 4 months is sufficient for this purpose. The appeal on ground (g) fails.

Other Matters

14. The appellant claims that requirement (iii) is imprecise. It has been held by the courts for many years that a requirement to restore the land to its condition before the development took place is perfectly valid. The appellant undertook the works to level the site and erect the gabion wall. He has the best knowledge of what the levels on site prior to the commencement of works were.

Conclusion

15. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with the variation set out above and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

A L McCooey

INSPECTOR